

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE: §
§
EDWARDLO AND AUDREY HOLMES, § CASE NO. 20-40912
§ (Chapter 7)
DEBTORS §

**MOTION FOR AUTHORITY TO SELL REAL PROPERTY FREE
AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES
LOCATED AT 3368 N. ALMOND DRIVE, RIALTO, CA. 92377**

Notice

Your rights may be affected by the relief sought in this pleading. You should read this pleading carefully and discuss it with your attorney, if you have one in this bankruptcy case. If you oppose the relief sought by this pleading, you must file a written objection, explaining the factual and/or legal basis for opposing the relief.

No hearing will be conducted on this pleading unless a written objection is filed with the Clerk of the United States Bankruptcy Court and served upon the party filing this pleading WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF SERVICE listed in the certificate of service unless the court shortens or extends the time for filing such response. If no objection is timely served and filed, this pleading shall be deemed to be unopposed, and the court may enter an order granting the pleading. If an objection is filed and served in a timely manner, the court will thereafter set a hearing with appropriate notice. If you fail to appear at the hearing, your objection may be stricken. The court reserves the right to set a hearing on any matter.

TO THE HONORABLE BRENDA T. RHOADES, U.S. BANKRUPTCY JUDGE:

Christopher J. Moser, Trustee ("**Trustee**") files his Motion for Authority to Sell Real Property Free and Clear of All Liens, Claims and Encumbrances Located at 3368 N. Almond Drive, Rialto, Ca. 92377 ("**Motion**") pursuant to the provisions of 11 U.S.C. §363(f) as follows:

1. On April 2, 2020, Edwardlo and Audrey Holmes ("**Debtors**") filed with this Court a voluntary petition under Chapter 7 of the Bankruptcy Code.
2. Christopher J. Moser is the acting Chapter 7 Trustee of the Debtors' bankruptcy estate.
3. The bankruptcy estate owns real property and improvements located at 3368 N. Almond Drive, Rialto, Ca. 92377 (the "**House**"). According to the Debtors' Schedules, as of the Date of

Bankruptcy the House was encumbered by a first lien mortgage in favor of Select Portfolio Services (“*SPS*”) in the approximate amount of \$179,000.00 and by a second lien in the approximate amount of \$299,000.00 in favor of the Internal Revenue Service (“*IRS*”).

4. The Trustee has received an offer from TCT Properties, LLC and/or its assigns (“*Buyer*”) to purchase the House for \$300,000.00. The offer will result in a “short sale” since there will be insufficient sale proceeds to pay-off the second lien in favor of the IRS.

5. Trustee seeks authority to sell the House to the Buyer for \$300,000.00 and: i) to pay SPS the approximate amount of \$179,000.00 for a full payoff; ii) to pay the bankruptcy estate a carve-out of \$25,000.00 from the IRS’s lien; iii) to pay normal closing costs, including unpaid property taxes, a realtor’s commission in the amount of \$18,000.00 and a title policy of \$1,200.00; and iv) to pay the remaining funds to the IRS on account of its second lien.

6. Trustee further seeks authority to execute, if necessary, the documents needed to release the SPS’s mortgage lien upon the House following payment of approximately \$179,000.00. Trustee seeks further authority to sign any and all documents necessary to close the sale of the House, including but not limited to lien releases and partial lien releases.

7. In summary, the Trustee seeks authority to sell the House pursuant to 11 U.S.C. §363(f) on the following terms:

- a. Property to be sold: the House (as defined above)
- b. Purchaser: TCT Properties, LLC and/or its assigns
- c. Price: \$300,000.00
- d. Terms: Cash to Seller
- e. Release of Liens: SPS will release its first lien upon the House upon being paid approximately \$179,600.00 and the IRS will partially release its lien upon being paid the remaining net sale proceeds.

8. Trustee believes that the sale of the House, as set forth herein, is in the best interest of the estate. This proposed sale is subject to any higher or better offers from a qualified buyer prior to the entry of a sale order approving this Motion.

9. Finally, due to the need to close this sale so as to stop the accrual of property taxes and to retain the Buyer, Trustee requests that any order approving this Motion exclude the fourteen day stay provided in Rule 6004(h) of the Federal Rules of Bankruptcy Procedure.

WHEREFORE, PREMISES CONSIDERED, the Trustee respectfully requests that pursuant to the provisions of 11 U.S.C. §363(f) this Court approve the sale of the House to a buyer on the above terms and that Trustee be granted such other and further relief to which he is justly entitled.

Respectfully submitted,

QUILLING, SELANDER, LOWNDS,
WINSLETT & MOSER, P.C.
2001 Bryan Street, Suite 1800
Dallas, Texas 75201
(214) 880-1805 (Telephone)
(214) 871-2111 (Telefax)
cmoser@qlwm.com (Email)

By: /s/ Christopher J. Moser
Christopher J. Moser

ATTORNEYS FOR TRUSTEE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served via regular U.S. mail, postage prepaid, on the 20th day of May 2020, upon all parties on the attached mailing matrix and upon the following:

Erica Williams
3368 N. Almond Drive
Rialto, Ca. 92377

Internal Revenue Service
P.O. Box 7346
Philadelphia, Pa. 19101-0424

Select Portfolio Servicing, Inc.
3217 S. Decker Lake Drive
Salt Lake City, Ut. 84119
Thousand Oaks, Ca. 91362

Internal Revenue Service
1100 Commerce Street, Room 951
M/S 5026DAL
Dallas, Texas 75242

Select Portfolio Servicing, Inc.
Attn: Bankruptcy Department
P.O. Box 65250
Salt Lake City, Ut. 84165

/s/ Christopher J. Moser